

Rec'd 12/17/98 @ 9:20 A.M.  
H. Peter Bragg

ORIGINAL

# FEDERAL COMMUNICATIONS COMMISSION

---

In Re Applications of: ) MM DOCKET No.: 98-66  
)  
HICKS BROADCASTING OF INDIANA, LLC )  
)  
Order to Show Cause Why the )  
License for FM Radio Station )  
WRBR (FM), South Bend, Indiana, )  
Should Not Be Revoked; )  
)  
AND )  
)  
PATHFINDER COMMUNICATIONS CORP. )  
)  
Order to Show Cause Why the )  
License for FM Radio Station )  
WBYT (FM), Elkhart, Indiana )  
Should Not Be Revoked; )

Volume: 13

Pages: 2001 through 2183

Place: Washington, D.C.

Date: November 6, 1998

---

## HERITAGE REPORTING CORPORATION

*Official Reporters*  
1220 L Street, NW, Suite 600  
Washington, D.C.  
(202) 628-4888

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In Re Applications of:	)	MM DOCKET No.: 98-66
	)	
HICKS BROADCASTING OF INDIANA, LLC	)	
	)	
Order to Show Cause Why the	)	
License for FM Radio Station	)	
WRBR (FM), South Bend, Indiana,	)	
Should Not Be Revoked;	)	
	)	
AND	)	
	)	
PATHFINDER COMMUNICATIONS CORP.	)	
	)	
Order to Show Cause Why the	)	
License for FM Radio Station	)	
WBYT (FM), Elkhart, Indiana	)	
Should Not Be Revoked;	)	

Courtroom 1, Room 227  
FCC Building  
2000 L Street, N.W.  
Washington, D.C.

Friday,  
November 6, 1998

The parties met, pursuant to the notice of the  
Judge, at 9:00 a.m.

BEFORE: HON. JOSEPH CHACHKIN  
Administrative Law Judge

APPEARANCES:

On behalf of Mass Media Bureau:

JAMES SHOOK, ESQ.  
ROY W. BOYCE, ESQ.  
KATHRYN S. BERTHOT, ESQ.  
Federal Communications Commission  
2025 M Street, NW, Suite, 731F  
Washington, D.C. 20554  
(202) 418-1454

Heritage Reporting Corporation  
(202) 628-4888

APPEARANCES: (Cont'd)

On behalf of Hicks Broadcasting:

ERIC, WERNER, ESQ.  
DOUGLAS W. HALL, ESQ.  
Verner, Liipfert, Bernhard, McPherson & Hand  
901 Fifteenth Street, NW  
Washington, D.C. 20005-2301  
(202) 371-6062

On behalf of Niles Broadcasting:

WILLIAM CRISPIN, ESQ.  
Crispin & Brenner, PLLC  
901 15th Street, NW  
Suite 440  
Washington, D.C. 20005  
(202) 828-0155

On behalf of Edward J. Sackley, III

KATHRYN R. SCHMELTZER, ESQ.  
Fisher, Wayland, Cooper,  
Leader & Zaragoza, L.L.P.  
2001 Pennsylvania Avenue, NW  
Suite 400  
Washington, D.C. 20006-1851

On behalf of Pathfinder:

MICHAEL J. GUZMAN, ESQ.  
ALLEN GARDNER, ESQ.  
ERIC L. BERNTHAL, ESQ.  
EVERETT C. JOHNSON, JR., ESQ.  
Latham & Watkins  
1001 Pennsylvania Avenue, NW  
Suite 1300  
Washington, D.C. 20004-2505  
(202) 637-2200

On behalf of Edward Christian

JAMES K. EMUNDSON, ESQ.  
Smithwick & Belendiuk, P.C.  
1990 M Street, NW, Suite 510  
Washington, D.C. 20036  
(202) 785-2800

Heritage Reporting Corporation  
(202) 628-4888

2003

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
David D. Hicks	2004	2020 2112			
Edward K. Christian	2167				

E X H I B I T S

	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
<u>Pathfinder:</u>			
37	Prev.	2016	
40	Prev.	2017	
46	Prev.	2018	

Hearing Began: 9:00 a.m.      Hearing Ended: 3:55 p.m.

P R O C E E D I N G S

1 THE COURT: Are you ready to proceed?

2 MR. HALL: Yes, Your Honor.

3 Whereupon,

4 DAVID HICKS

5 having been previously duly sworn, was recalled as a witness  
6 herein and was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. HALL:

9 Q Good morning, Mr. Hicks.

10 A Morning.

11 Q Before we proceed to the areas of questioning I  
12 didn't get to with you yesterday, I'd like to go back and  
13 cover one area that I think some of my questions might have  
14 been a little confusing on.

15 You remember yesterday I asked you a question  
16 about whether you had seen certain memorandums to Mr. Watson  
17 concerning the money that the children had paid or loan to  
18 the company for payments to Mr. Booth?

19 A Yes.

20 Q Now, what -- you said you had seen such a  
21 memorandum?

22 A I believe I stated that I had, yes.

23 Q Okay. And you recall what memorandum you were  
24 referring to that you remembered seeing in relation to that?

1           A     The actual notes that I had to sign regarding the  
2     number of loans.

3           Q     Turn if you would to Volume 3 of the Mass Media  
4     Bureau Exhibits, Exhibit Number 103. Specifically, Mr.  
5     Hicks, if you could turn to page 5 of that exhibit.

6                     Do you see that document, sir?

7           A     I do.

8           Q     And that's a document on the bottom right says  
9     "Pat 00365." Just make sure we're on the same page.

10          A     Yes.

11          Q     Is this the type of memorandum you were referring  
12     to yesterday when you indicated that you had seen a  
13     memorandum from Mr. Watson about money lent by the minority  
14     members?

15          A     Yes, it was.

16          Q     Similarly, if you could turn to the next exhibit,  
17     Exhibit 104 and look at page 9 of that document. The  
18     document at the bottom right has been marked Taft 00403.

19                     Do you have that document, Mr. Hicks?

20          A     I have that.

21          Q     And what is this document?

22          A     This is basically the same type of a document that  
23     we just reviewed where there would be notes for my  
24     signature.

25          Q     I gather this is the same type of memorandum as

1 the one we just looked at, at 103, page 5?

2 A I believe that's correct, yes.

3 Q I'm going to ask you about a different type of  
4 memorandum and see if you've seen it before. If you could  
5 turn back to Exhibit 102 in that volume, and look at pages 1  
6 through 3 of that document -- exhibit, I should say.

7 A I see these documents.

8 Q Did you get copies of these documents in September  
9 of 1994?

10 A No, I've never seen these documents.

11 Q Have you ever seen any memos of this sort until  
12 during the course of this litigation?

13 A No, I had not.

14 Q Now, if you would turn to page 6 of that exhibit,  
15 have you seen this type of document before, Mr. Hicks?

16 A I recall seeing this document. It was sent to me.

17 Q But you didn't get copies of the memorandum that  
18 Mr. Watson was sending that minority member?

19 A I did -- I'd never seen the other documents, no.

20 Q If you could turn to Volume 1 of the Mass Media  
21 Bureau Exhibits and look at Exhibit 1. I think it's on your  
22 right, Mr. Hicks. And I specifically draw your attention to  
23 page 33, 34 and 35 of Exhibit 1. If you could take a moment  
24 to look at those documents.

25 A Okay.

1           Q     Did you receive copies of these documents in 1993  
2 when they're dated?

3           A     I don't recall ever seeing these documents.

4           Q     And what about the copies of checks and deposit  
5 tickets that are attached as the next three pages, 36 -- I'm  
6 sorry, next four pages, 36 through 39. Did you ever see any  
7 of those documents?

8           A     No, I have not. I don't recall seeing any of  
9 these.

10          Q     Thank you, Mr. Hicks. Yesterday we were talking  
11 about some of the things you do currently for WRBR. I want  
12 to make sure we didn't -- we covered the waterfront there.  
13 Were there any other duties that you have for WRBR that, as  
14 best as you can recall, we didn't cover yesterday?

15          A     Well, I think my role as the owner of the company  
16 is to oversee the direction of the radio station that is set  
17 forth by guidelines established by myself and with much  
18 input from our general manager. And I don't feel that my  
19 management philosophy is a micromanaging philosophy. I  
20 think if you hire outstanding people or qualified people to  
21 do a job, then it's always been my theory that you let them  
22 do that job.

23                However, there are some things that I feel that  
24 not only I enjoy doing in this radio business, and I think  
25 being in the position I'm in, maybe I can pick and choose



1     some of the things I enjoy to do. And maybe let other  
2     things that I'm not so comfortable or enjoy doing so much,  
3     let them -- someone else do those things.

4             But programming is one of those issues. And of  
5     course, the sales end is the other issue. And we have a  
6     very good system in place for local sales in our  
7     organization. And there -- I think in companies our size,  
8     there is always this neglect in the national sales arm. And  
9     so, I try to become involved in that. And the local sales  
10    arm is separate from the national sales arm. And so, I  
11    provide assistance in that regard.

12            And I do periodically trips to meet with our rep  
13    offices in cities like New York and Minnesota and Detroit  
14    and Chicago and Atlanta and present our story to their --  
15    those sellers out there who are representing our station on  
16    a national level. And I'm very involved with Steve Klein in  
17    that regard. In fact, we dual -- dual up sometimes in those  
18    trips.

19            Q     We talked yesterday about the frequency in type of  
20    communications you have with Mr. Turner. And I don't know  
21    if we covered that with Mr. Klein. How frequently, a weekly  
22    or monthly basis say, are you in touch with Mr. Klein about  
23    WRBR issues?

24            A     I'm in touch with Mr. Klein quite frequently,  
25    maybe much more than Mr. Turner. And in sometimes it's long

1       conversations. Sometimes it's just, "Hello. How are things  
2       going? Anything I ought to know about? Any problems?" And  
3       sometimes it's very brief.

4               We do e-mail, also. And I do visits. And my  
5       visits are always directed, number one, to Mr. Klein.

6           Q     Other than sales which you just discussed, what  
7       other things do you discuss with Mr. Klein?

8           A     Well, the -- general overall operation of the  
9       company.

10          Q     What sorts of things does that involve?

11          A     Well, it could involve everything from  
12       engineering, right on through to promotions to you know, the  
13       sales area, programming. Everything all encompassing.

14          Q     How far is the radio station from where you live,  
15       Mr. Hicks?

16          A     Well, it takes me about an hour, a little less  
17       than an hour depending on the traffic conditions.

18          Q     How often do you visit the station these days?

19          A     Well, I have been going much more than just  
20       recently, but I try to get down there at least -- I was  
21       trying for awhile at least once a week. Sometimes it'll be  
22       you know, twice in one week. Sometimes it won't be for two  
23       weeks or so. But you know, definitely periodically, and I  
24       usually try to spend at least, you know, a full day there  
25       when I'm down.

1           Q     Are these regularly scheduled visits or just as  
2     you feel need?

3           A     No, I -- just as I feel need and whatever projects  
4     we happen to be working on.

5           Q     Does Hicks Broadcasting have a line of credit or  
6     other banking relationship with a financial institution?

7           A     Yes, we do.

8           Q     How long has that been the case?

9           A     It's been just more recently when the company got  
10    into the position that I felt we would be attractive to --  
11    to a lending organization or a bank. And I also way early  
12    in the game, felt it was very important to have a banking  
13    relationship, whether we needed money or we didn't need any  
14    money. So, when we got in that position, I started shopping  
15    and talking to some local banks in the area, and I think  
16    visited two or three banks in a formal presentation on the  
17    radio station.

18                   At that particular time, my thoughts were down the  
19    road we may need some capital for our balloon that was  
20    coming due for the Booth note. And this was a great  
21    opportunity I thought because the station was financially  
22    sound at that time to be attractive to a lender.

23                   So, I started making some inquiries and we had --  
24    and were received very good by some banks. There was some  
25    interesting thoughts about which direction we go and whether

1     these banks were pro-radio advertisers or whether they  
2     weren't. I mean, those were kind of in the back of our  
3     mind.

4             But it ended up that we -- I had a banking  
5     relationship in my home town of Portage. And they also have  
6     a bank in our signal area in Elkhart. So, that was a Old  
7     Kent Bank, which is headquartered in Grand Rapids, Michigan.  
8     That happened to be the bank that really took the most  
9     interest in what I was seeking, and we were able to -- able  
10    to establish a line of credit.

11            THE COURT: Can we get a timeframe for these  
12    events?

13            BY MR. HALL:

14            Q     Yes. When did this occur, Mr. Hicks,  
15    approximately?

16            A     Well, it was prior to the payoff of the Booth  
17    note. And maybe somebody can help me on that. I'm not at  
18    all very good at remembering these dates, especially at this  
19    time period. But --

20            Q     If you could turn to Mass Media Bureau 100. This  
21    might help. That's in Volume 3 I believe of the Mass Media  
22    Bureau Exhibits. And at the beginning of page 10 of the  
23    document are the minutes of the August 20, 1997 meeting of  
24    the members of Hicks Broadcasting of Indiana.

25            Do you remember that Old Kent Bank proposal at

1 this board meeting? Actually, I'd direct your attention to  
2 page 11, second bullet paragraph to assist your memory.

3 A Well, this does state the balloon payment was due  
4 in January -- on January 1 of that year.

5 THE COURT: What year is that?

6 THE WITNESS: That would have been 1998.

7 BY MR. HALL:

8 Q If you turn to pages --

9 A 1998.

10 Q -- 12 through 17, are these materials that Old  
11 Kent provided as a proposal to Hicks Broadcasting of  
12 Indiana?

13 A That's right. And I believe this was the  
14 commitment letter, which was dated August 19, 1997. So, it  
15 was within that time period, yes.

16 THE COURT: All these activities you discussed  
17 were all within this time period, or when did they begin? I  
18 mean, you gave a long elaborate answer, but you didn't  
19 provide time periods.

20 THE WITNESS: Okay. I'm sorry, Your Honor. This  
21 was -- this was the final one, and we probably started in  
22 June or July of that year.

23 THE COURT: 1997?

24 THE WITNESS: 19 -- just talking with banks and  
25 getting a feel, and actually finding Old Kent Bank's

1 commitment about that time. So, it was within that  
2 timeframe.

3 BY MR. HALL:

4 Q Okay. Thank you, Mr. Hicks. At this point, I'd  
5 like to show you some documents and see if you can identify  
6 or indicate whether you received them or not.

7 Start with Mass Media Bureau Exhibit 48, which is  
8 Volume 2. I think that's on the table.

9 THE COURT: Was it clear in the record, did you in  
10 fact establish a banking relationship with some bank?

11 THE WITNESS: That is correct.

12 THE COURT: When was that? I know you've  
13 mentioned had various discussions.

14 THE WITNESS: Okay. It appears that it was in  
15 August of 1997.

16 THE COURT: And with whom did you establish a  
17 banking --

18 THE WITNESS: The Old Kent Bank.

19 THE COURT: Because you mentioned the Portage  
20 Bank.

21 THE WITNESS: Well, that -- excuse me. That was a  
22 branch of -- they're spread out to --

23 THE COURT: That's a branch of the --

24 THE WITNESS: They're spread out through Michigan  
25 definitely and Indiana, and I'm not sure of any other states

1       they cover. But it's quite a large banking facility.

2               THE COURT: What was the nature of the banking  
3       relationship you established? You had an account or what?

4               THE WITNESS: We established a line of credit. In  
5       this particular case, I believe it was a quarter of a  
6       million dollars that we could draw on if needed and when  
7       needed.

8               BY MR. HALL:

9               Q     Have you done that, Mr. Hicks?

10              A     Yes, we have.

11              Q     What did you draw on it for?

12              A     Well, we actually used a good portion to pay down  
13     or to pay off the final balloon payment to Mr. Booth.

14              Q     May I proceed to the next point?

15               THE COURT: I just wanted to get this --

16               MR. HALL: No, I appreciate it. Thank you.

17               BY MR. HALL:

18              Q     Mass Media Bureau 48, Mr. Hicks, is a document  
19     that's already been identified and entered into evidence.  
20     My question is simply, do you remember receiving the  
21     memorandum that is page 2 of this document?

22              A     Yes, I do.

23              Q     And did you receive it on or about March 1994  
24     timeframe?

25              A     I -- I would believe it would be in that

1     timeframe.

2           Q     If you could turn to the Pathfinder volume of  
3     exhibits. I've got a few documents in there I'd like to ask  
4     you to look at. Turn to Number 37 if you would, Mr. Hicks.

5           A     Have you seen this document before, Mr. Hicks?

6           A     Yes, I have.

7           Q     What is this document?

8           A     This is a blanket license agreement with the group  
9     known as ASCAP, American Society of Composers, Authors and  
10    Publishers and Hicks Broadcasting of Indiana, LLC.

11          Q     What does this license permit the radio station  
12    signing it to do?

13          A     This permits us to play music that is licensed by  
14    this group called ASCAP.

15          Q     If you look at page 6 of the exhibit, Mr. Hicks,  
16    is that your signature on behalf of Hicks Broadcasting?

17          A     That's my signature, uh-huh.

18               MR. HALL: Your Honor, we'd like to move the  
19    admission of Pathfinder Exhibit 37.

20               THE COURT: Any objection?

21               MR. SHOOK: No objections.

22               THE COURT: The exhibit is received.

23

24

25



1 (The document referred to,  
2 having been previously marked  
3 for identification as  
4 Pathfinder Exhibit 37.)

5 BY MR. HALL:

6 Q Would you turn to Pathfinder Exhibit 40, Mr.  
7 Hicks, and take a moment to look at that document. Let me  
8 know if you've seen it before.

9 A I have.

10 Q And what is this document, Mr. Hicks?

11 A This is a letter from CCAC organization calling my  
12 attention to -- they are returning my -- or the signed  
13 agreement, which is one and the same that I just mentioned  
14 so our radio station could play music licensed by CCAC.

15 Q Is that your signature on page 2 of the exhibit,  
16 Mr. Hicks?

17 A That is.

18 MR. HALL: Your Honor, I'd like to move the  
19 admission of Pathfinder Exhibit 40.

20 THE COURT: Any objection?

21 MR. SHOOK: No objection.

22 THE COURT: The exhibit is received.

23

24

25

1 (The document referred to,  
2 having been previously marked  
3 for identification as Exhibit  
4 40, was received in evidence.)

5 BY MR. HALL:

6 Q If you could turn to Exhibit 45 in the Pathfinder  
7 volume, Mr. Hicks. Tell me if you've seen this document  
8 before.

9 A I have seen this, yes.

10 Q And can you tell us what this document is?

11 A This document is a memo from our Washington legal  
12 firm and specifically, Alan Campbell, regarding an EEO form  
13 that was filed on behalf of Pathfinder Communications, I  
14 believe, that also included Hicks Broadcasting on a single  
15 form. And I think he is calling this to my attention that  
16 perhaps he needed to refile -- he was just calling my  
17 attention to the fact that we need to file another report.

18 Q Mr. Campbell is Hicks Broadcasting FCC counsel at  
19 this time?

20 A That's correct.

21 Q Did Mr. Campbell and this firm represent Hicks in  
22 the filing of the EEO reports throughout Hicks career?

23 A They always have from day -- the first day  
24 forward, yes.

25 MR. HALL: Your Honor, my records are inconsistent

1 as to whether this document has been --

2 THE COURT: I have it. The reporter indicates to  
3 me it has been received.

4 MR. HALL: It has been? Okay. Thank you.

5 BY MR. HALL:

6 Q If you could turn to the next document then, Mr.  
7 Hicks.

8 A Forty-six?

9 Q Yes. Take a moment to look at that and let me  
10 know if you've seen that before.

11 A I believe I have. It was sent to me. I don't  
12 have a recollection of it, but I do recall that this  
13 pertained to that odd filing, and we needed some  
14 clarification.

15 MR. HALL: Your Honor, I'd move the admission of  
16 Pathfinder 46.

17 THE COURT: Any objection?

18 MR. SHOOK: No objection.

19 THE COURT: The exhibit is received.

20 (The document referred to,  
21 having been previously marked  
22 for identification as  
23 Pathfinder Exhibit 46, was  
24 received in evidence.)

25

1 BY MR. HALL:

2 Q Just a couple of final questions, Mr. Hicks. At  
3 any point in the application process relating to WRBR, did  
4 you -- of Hicks Broadcasting, did you have any intention of  
5 misleading the Commission in any way?

6 A I never had any intentions of leading the  
7 Commission in any way. No, sir.

8 Q Have you ever transferred control over WRBR to  
9 Pathfinder or John Dille or anyone other than yourself and  
10 Hicks Broadcasting?

11 MR. SHOOK: Objection. Calls for a legal  
12 conclusion.

13 THE COURT: I'll permit it. Overruled.

14 THE WITNESS: I've always tried to operate within  
15 the guidelines set forth by counsel. And I've taken every  
16 effort I could to consult counsel on every move in this  
17 transaction and have never felt that I've ever relinquished  
18 control or intended to.

19 BY MR. HALL:

20 Q Who runs Station WRBR, Mr. Hicks?

21 A I do.

22 MR. HALL: Thank you. That's all I have, Your  
23 Honor.

24 THE COURT: Cross-examination?

25 MR. SHOOK: Yes, sir.

## 1 CROSS-EXAMINATION

2 BY MR. SHOOK:

3 Q Mr. Hicks, I want to take you back and try to run  
4 through a number of these things chronologically. The first  
5 area that I'd like to discuss with you is your familiarity  
6 with the financial performance of various stations prior to  
7 the time you were involved in their purchase. And as I  
8 understand it, the first two stations that you were involved  
9 in purchasing were with call signs WKFR and WKNR?

10 A That's correct.

11 Q And if I remember correctly, you had been the  
12 general manager of those stations for approximately five  
13 years prior to the time of their purchase?

14 A Again, approximately, the time period kind of  
15 escapes me, but yes I was general manager of those two  
16 stations.

17 Q And in your role as general manager, you were  
18 intimately familiar with the financial performance of the  
19 stations, both from an expense and a revenue standpoint?

20 A Yes.

21 Q So that when the time came for you to make a bid  
22 for the purchase or to determine the purchase price of those  
23 stations, you had a very good idea of how those stations had  
24 been performing?

25 A I had a good idea of how those were performing at

1     that time, yes.

2           Q     Now, with respect to the next purchase with which  
3     you were involved, that was WKMI?

4           A     That's correct.

5           Q     Could you give me an idea as to the timeframe  
6     between the time you determined that you might be interested  
7     in purchasing the station and the time that you actually did  
8     so?

9           A     You're referring to the WKMI purchase?

10          Q     Yes, sir.

11          A     That happened -- that happened within I believe  
12     the first year, the '85, '86 period -- timeframe when I  
13     purchased WKNR and WKFR. This opportunity came about in  
14     Kalamazoo I think within that timeframe. So, it was -- if I  
15     recall, the station had been sold, and it did not close.  
16     And the owner of the station called me and said that he  
17     would like to talk about possibly me buying it. And he said  
18     he had a deal and it didn't go through. And I think it was  
19     within a year period there -- first year.

20          Q     Now, do you remember what the deal itself was that  
21     he had that didn't close?

22          A     You mean the numbers?

23          Q     The parameters of the deal basically in  
24     generalities. I don't need a lot of specifics.

25          A     If I recall, it sold originally for more than I

1     paid for it. And I -- you know, I just really can't even  
2     remember what I paid. It might have been in the 700 range.  
3     I'm not really sure. I mean, I really -- you probably know  
4     better than I do. But I'm sorry. I just don't really know  
5     at this point. I can't remember.

6           Q     Now, both of us assume shouldn't assume anything  
7     here.

8           A     Okay.

9           Q     With respect to WKMI, what kind of analysis did  
10    you do beforehand to determine what offering bid you should  
11    make?

12          A     Well, that was a little different situation  
13    because I wanted a presence in Kalamazoo. So, there was  
14    some value to that to me because I was in an adjacent city.  
15    And we were also at that time exploring what the Commission  
16    had, was what they called dual licenses where you could be  
17    licensed to two cities. We did apply for that designation.

18               And so, that was attractive to me. Even though it  
19    was an AM radio station, it was a 5,000 watt radio station  
20    that had been in the Kalamazoo area for a long, long time  
21    and was very well respected and very well known. And I  
22    thought that that was a good avenue for me to pair up with  
23    my Battle Creek FM station, which was a 50,000 watt station.  
24    And that really -- putting together, I would really have  
25    Kalamazoo presence.

1           So, you're asking of just a stick value or a value  
2   of that radio station. I was really kind of buying a market  
3   rather than a station and presence.

4           Q     I take it that you had done some kind of financial  
5   analysis to ascertain what the station's revenues and  
6   expenses were?

7           A     Oh, certainly. And at that time, this was all  
8   bank financing. It was driven that way. And so, they had  
9   to have all of these numbers analyzed, and my accountants  
10  did this for me. Yeah, it was that kind of a situation.

11          Q     Maybe it's a chicken and egg thing, but did you  
12  make your own assessment of the financial performance before  
13  you went to the banks, or did the banks require you to  
14  discuss this assessment?

15               MR. HALL: WKMI deal?

16               MR. SHOOK: Yes, sir. I'm still on WKMI.

17               THE WITNESS: Yeah, I was working very closely  
18  with my accounting firm, BDO Seidman in Kalamazoo. And they  
19  were really driving this and putting together the business  
20  plan and the package and the whole thing in conjunction with  
21  the banks because it was -- I mean, the banks could see this  
22  at this time. This was increasing their portfolio or value,  
23  also.

24               So, it was a combination of a lot of things. And  
25  again, you know, everything I've ever done here is always in



1     this inner -- this changing environment that we're having in  
2     our business. And again, that was kind of this dual license  
3     thing, if I remember at that time. So, that was very  
4     attractive. And the banks were looking at that, too.

5             BY MR. HALL:

6             Q     I take it you had satisfied yourself that the  
7     offering bid that you ultimately made was appropriate  
8     considering the station's expenses and revenues?

9             A     Well, yes. But here again, it's hard to put a  
10    value on what -- when you're buying a market, when you're  
11    buying presence. I mean, you -- there's some value out  
12    there, but it's hard to put a dollar on because it's  
13    something down the road that you're going to achieve because  
14    you did it.

15            Q     So, in this particular case, your focus was not  
16    only on the station's financial history, but also on your  
17    understanding of the potential of the station?

18            A     That's correct.

19            Q     Now, when the time came for what led to the merger  
20    with the Airborne Group, what kind of financial analysis did  
21    you do with respect to their station? The Airborne Group  
22    station?

23            A     Well, we reviewed obviously their financial  
24    reports as they reviewed ours. So, we had that. We -- I  
25    mean, that's where we started, certainly by reviewing each

1 other's financial reports.

2 Q And you were satisfied after that review that you  
3 had a good understanding of the station's financial history?

4 A Yes. They hadn't been in business that long,  
5 but - so it wasn't much history, but it was -- yeah. It was  
6 understanding -- understandable.

7 Q They had been on the air four or five years?

8 A I think so.

9 Q And you had a chance to look at the financial  
10 documents for that entire time period?

11 A Yeah, I believe we kind of -- if I recall, again,  
12 I think we analyzed it through -- a lot of this was done  
13 with again, the Seidman accounting firm.

14 Q So, the analysis that was undertaken was not just  
15 yourself, but with your accounting firm?

16 A That's correct.

17 Q Now, when it came time for you to consider the  
18 purchase of WRBR, what financial documentation did you  
19 consider?

20 A Did not really, really have a lot to really bank  
21 on. I think maybe one year prior or two. But it was one of  
22 those statements that you could look and like I think I said  
23 yesterday, it was all expenses and very little revenue. And  
24 the perception I had of this new venture was going to be the  
25 other way around. All revenue and very little expenses.

1 And so, that was what I was really looking at it. And I  
2 could see that there was a little revenue there.

3 The expenses, which were driving that radio  
4 station, were really insignificant in my analyzing of that  
5 deal at that time. I mean, there were certainly some fixed  
6 costs that you have that you got to -- but the majority of  
7 it was something that I didn't have any intentions of  
8 continuing with.

9 Q I want to just direct your attention to Mass Media  
10 Bureau Exhibit 5, which is in the second volume. Have you  
11 seen this particular documentation before? I believe it's  
12 four pages, and it appears to be the 1991 and 1992 financial  
13 history of WRBR.

14 A I believe I have, yes.

15 Q You mentioned a number of times that there were I  
16 think employee-related expenses that you believed you were  
17 going to be able to decrease significantly. Am I  
18 understanding it correctly?

19 A That was one area, yes.

20 Q Do you have any other areas in mind right now?

21 A Well, I think all of the departments certainly  
22 were going to be analyzed, the sales expenses, the  
23 administrative expenses, definitely in programming.

24 Q Help me. What could be reduced in the programming  
25 area?

1           A     Announcers salaries, a good portion of those.

2           Q     All right.  What I'm looking at for there -- I  
3     want you to look at page 2.

4           A     Yes.

5           Q     I take it what you're referring to there would be  
6     the salaries for the news people and the salaries for the  
7     announcers?

8           A     That would be one of the items, yes.

9           Q     I guess the much larger figure is the salary for  
10    the announcers.  You figured you could substantially cut  
11    back on that?

12          A     Well, I -- definitely.  I had talked about  
13    automation and using you know, very limited announcing,  
14    actual live announcers.

15          Q     All right.  I'm directing your attention to the  
16    third page under Administrative Expense.  I take it from  
17    your testimony that you had in mind that the various  
18    salaries under the Administrative Expense category could be  
19    significantly reduced?

20          A     Definitely.

21          Q     Do you see anything else in this category that you  
22    thought could be significantly reduced?

23          A     Well, I think clerical depending on, you know, how  
24    far the JSA would work in that particular area.  Definitely  
25    there would be a cost savings there.

1           Q     Oh, I see.  You're referring to the salaries for  
2     clerical?

3           A     Right.  I mean, that was just a review with that  
4     particular time of knowing that there is definitely room for  
5     economic saving there.

6           Q     Now, is your assessment of the deal progressed, if  
7     you will?  Did you have an opportunity to review any  
8     materials for the year 1993?  I recognize that the materials  
9     I'm showing you are just for 1991 and 1992.

10          A     Yeah.  I -- I don't really -- can recall what  
11     years specifically.  When you called my attention to this, I  
12     did remember seeing this.  But I -- as far in 1993, I  
13     couldn't definitely say there is one or I saw one or how  
14     complete it was.

15          Q     Now, one of the things that I guess we've been  
16     focusing on here was the number of employees and their  
17     related expenses at the station.  What understanding did you  
18     have in terms of how many employees there actually were at  
19     WRBR in 1993 as you were focusing on whether or not to go  
20     forward with this deal?

21          A     It seemed like the number 19 stood out somewhere.  
22     That could be or couldn't be.  And whether that was full  
23     time or part time/full time, I'm not real sure.  But  
24     somewhere along the line, 19 was a number.

25          Q     I want to direct your attention to Mass Media

1 Exhibit 7, which is I believe not yet in evidence.

2 THE COURT: No, it's not in evidence.

3 BY MR. SHOOK:

4 Q In the course of assessing the WRBR deal, did you  
5 happen to look at the 1993 EEO filing for WRBR?

6 A I don't recall that I did or didn't.

7 Q Do the numbers that appear on page 2 refresh your  
8 recollection at all as to the number of employees that were  
9 at the station as you were assessing the station's  
10 situation?

11 A That would show me that there were a total of  
12 probably 14 reported at that particular payroll time. So,  
13 it was in line for I guess what I thought was probably the  
14 number.

15 Q Now, you had mentioned automation as something  
16 that you had in mind I take it to reduce your expenses by  
17 reducing the number of employees that you were going to  
18 need?

19 A That's correct.

20 Q Could you tell us what was on your mind in terms  
21 of how you were going to automate and what this was actually  
22 supposed to do?

23 A Well, I was familiar with automation because we  
24 had done that in Battle Creek in my original radio station.  
25 It became more sophisticated as time went by and computers

1     were being used to drive it rather than just the big tape  
2     decks and that sort of thing.

3             So, it was -- and radio stations were using  
4     computer -- or automation sometimes for all nights --  
5     overnight rather than having live people there. And I guess  
6     I was going to take it to the next step of definitely  
7     overnights and weekends and then perhaps maybe some day  
8     parts, like maybe midday, 10 to 3 area of the broadcast day.

9             So, those were the lines of my thoughts in using  
10    automation.

11            Q     Did you end up following through on any of those?

12            A     Yes, we did.

13            Q     And what automation took place?

14            A     And we began to automate WRBR when we moved into  
15    the common facility. So, it was pretty short time within to  
16    take over the station.

17            Q     And what did that automation do? I mean, what  
18    time periods were utilized by automation?

19            A     Well, the weekend time period, the overnight time  
20    period definitely were the first starts. And I think we  
21    were able to not at the initial beginning, but shortly  
22    thereafter I think we did do the midday day part.

23            Q     In order to do that, there was some computer  
24    equipment purchased then?

25            A     There was some automation equipment purchased,

1     yeah. Back then how sophisticated that was compared to  
2     today -- I mean, we're very advanced today. And it was the  
3     best automation equipment at that particular time.

4           Q     Was that automation equipment solely under the  
5     ownership of Hicks Broadcasting of Indiana, LLC, or was that  
6     a shared piece of equipment?

7           A     No, that was owned by Hicks Broadcasting.

8           Q     And it was purchased sometime after -- shortly  
9     after you took control of WRBR?

10          A     That's correct.

11          Q     Another area I'd like to explore with you is the  
12     familiarity with your business partners. Prior to the time  
13     or in conjunction with the merger that took place with the  
14     Airborne Group, what steps had you take to ascertain who it  
15     was that you were going to be working with?

16          A     The Airborne Group approached me regarding this.  
17     This isn't anything that I hadn't thought about because I  
18     had talked to another radio operator in Kalamazoo prior to  
19     that just briefly. As times are changing and you know,  
20     maybe it's time to talk about things, how we can benefit  
21     each other.

22                   And about that same time I received a call from  
23     Mr. Sackley. I really didn't know a great deal about Mr.  
24     Sackley and the family. I don't know that -- obviously they  
25     had run a radio station in Portage, Michigan and had been on



1 the air four to five years. So, getting to know them --  
2 that operation came about from that period on, as we had  
3 discussions and talks.

4 Q Now, the first contact was made approximately how  
5 long before you actually signed a document that looked  
6 toward a merger?

7 A That particular first contact was made in  
8 December. I think it was '92 maybe -- yeah, somewhere in  
9 that area. And again, the documents are going to have to  
10 show about when we made that merger, but it was in '93 and  
11 in that area.

12 Q Right. At this point, I'm not thinking about the  
13 closing of the merger, which I think we've all pretty much  
14 established is August 31, 1993. What I'm thinking of more  
15 is when you actually agreed to merge.

16 A Yeah, I don't know when they -- when that  
17 agreement was -- when we both said, "Hey, this sounds like  
18 the thing we ought to do." But it was -- there was quite a  
19 little discussion there. I got Ric Brown involved in this a  
20 lot to do, you know, some more exploring on his part. I  
21 talked to the Seidman people, the accounting office about  
22 that. Talked to my bank about that, because they were very  
23 anxious to take their balloon payment. I mean, they wanted  
24 their balloon payment.

25 So, this was a way of me playing with the bank to

1 kind of you know, let them know I'm doing something here and  
2 something's going to happen. So, yeah, there was a period  
3 of time there, but I'm not actually sure of how long.

4 Q But I take it you had a number of face to face  
5 conversations with at least Mr. Sackley?

6 A Oh, yes. Yes.

7 Q And did you have any face to face conversations  
8 with anybody else in that organization?

9 A No.

10 Q So, the deal came about basically through your  
11 contacts with Mr. Sackley and vice versa?

12 A We kind of agreed at the very beginning that our  
13 conversations would be very confidential between the two of  
14 us in case this thing never happened, and then there  
15 wouldn't have been any problems within our individual  
16 companies with employees and that sort of thing. It was --  
17 you know, we wanted to make the announcement when we were  
18 ready to make that announcement.

19 Q Now, as a result of these initial contacts that  
20 you had with Mr. Sackley, did you develop any kind of  
21 opinions as to the man's truthfulness?

22 A No, I -- I kind of -- Ed Sackley had the image of  
23 being kind of a hard guy to get to know. And I learned to  
24 like him I thought quite fast. And I thought I was very  
25 open, and I guess I felt he was very open at that period. I

1 thought we were commuting -- communicating quite well.

2 Q I mean, during this period at least, if he told  
3 you something, you would believe it?

4 A Yes. I didn't have any reason not to.

5 Q Now, did there come a time when that opinion  
6 changed?

7 A Yes.

8 Q Why was that?

9 A I think I sensed from the day the deal was signed  
10 that attitudes had changed all the way through in the  
11 family. And the family became much more involved with -- I  
12 guess I looked at it as this is probably a takeover type  
13 move rather than a merging of in good faith. I guess it  
14 happened about that time. It was kind of a gut feeling that  
15 I had.

16 Q Sort of a change in perception than what  
17 originally was meant to be? Some kind of 50/50 situation  
18 was turning into something different?

19 A That's correct.

20 Q But of course, when you signed the merger  
21 document, you understood the percentage of ownership that  
22 you were going to have in the new entity. Did you not?

23 A I did.

24 Q And you also had an understanding as to the number  
25 of board members that you were going to be able to have on

1     this entity relative to the board members that were coming  
2     from the Airborne Group?

3             A     That's correct.

4             Q     Now, you've had a fairly long relationship with  
5     Mr. Eric Brown. Have you not?

6             A     Yes, I have.

7             Q     And that relationship has not only been a  
8     professional one but a social one?

9             A     It has been, yes.

10            Q     Over the course of your relationship with Mr.  
11     Brown, did you develop an opinion as to his truthfulness?

12            A     Oh, yes.

13            Q     And that opinion is?

14            A     He's very -- he's a very truthful person. He's  
15     very well respected in the community. He's top drawer.

16            Q     I want to focus on your relationship with Mr. John  
17     Dille. Prior to the time the WRBR deal first came to your  
18     attention, and by that I mean not the proposal from Booth,  
19     but the proposal that was made to you by Mr. Dille.

20                   What kind of understanding did you have, or what  
21     kind of relationship did you have with Mr. Dille from a  
22     professional and personal standpoint?

23            A     An acquaintance. Maybe more than an acquaintance,  
24     maybe one that -- when John and I were at a same function  
25     together, he might come directly to me or I might come

1 directly to him first to say hello. It wasn't one of  
2 these -- because that acquaintance grew a little more than  
3 just an acquaintance because I think we had good rapport. I  
4 think we found we had good discussions about our industry  
5 together, and we were thinking along the same lines in a lot  
6 of things.

7 I was very interested in the NAB and knew that he  
8 had had past involvements in the NAB, and we shared a lot of  
9 those, you know, common concerns and talks about the  
10 industry. It would be just general.

11 So, a little more than just an acquaintance, but  
12 not what I would call you know, a good friend at that time.

13 Q So, when you had your initial contacts with Mr.  
14 Dille relative to the WRBR proposal in July of 1993, I take  
15 it Mr. Dille was a person that you knew something about, but  
16 your level of knowledge at that point was relatively  
17 superficial?

18 A Well, I think your -- it was just what I just  
19 stated.

20 Q Now, at that point -- I realize this may be a bit  
21 difficult to do, but thinking back to July of 1993 when Mr.  
22 Dille first presented the WRBR proposal to you, did you have  
23 an opinion as to his truthfulness?

24 A I remember when he presented this whole thing to  
25 me. I had no doubts about this truthfulness. I was

1 surprised that the industry had moved this far and was  
2 talking about moving further in the consolidation efforts to  
3 really help radio stations like we had, which was wonderful.  
4 And I was -- I wanted to hear from him because he knew much  
5 more about it I felt at that time, than I did, obviously.

6 So, I had no doubts about his truthfulness, no.

7 Q And would I be correct that your opinion of him  
8 has never changed in that sense?

9 A Oh, it's never changed.

10 Q I want to take a look with you at Mass Media  
11 Bureau Exhibit 23. And the document that I want to focus  
12 your attention on initially is the agenda of the board  
13 meeting that was going to take place on September 28, 1993.  
14 And that appears on pages 10 and 13 -- 10 through 13,  
15 rather, of this exhibit.

16 A Yes.

17 Q Now, first of all I'd like you to turn to page 12.  
18 And if you could just read to yourself the outside ownership  
19 and/or quasi ownership of additional broadcast properties  
20 section.

21 MR. HALL: Your Honor, we're going to do the same  
22 thing we did yesterday with the breaks. I'd just want to  
23 offer it since Mr. Shook is doing examination.

24 THE COURT: Well, I'll ask the witness. Do you  
25 feel you need a break every hour?

1 MR. SHOOK: I'm fine with a break if he needs it.

2 THE COURT: It's up to you, Mr. Hicks.

3 THE WITNESS: Well, let's -- could we maybe about  
4 10:30? That'd be fine.

5 THE COURT: Whatever you say. Whenever you tell  
6 me you need a break, we'll take a break.

7 MR. SHOOK: Mr. Hicks, please if you need a break,  
8 just say so.

9 THE COURT: Well, he's indicated. He'll tell me  
10 if he needs one. But we will take a break at 10:30.

11 BY MR. SHOOK:

12 Q All right. Mr. Hicks, the first -- have you had a  
13 chance to look at that section, sir?

14 A I have, yes.

15 Q Focusing on the first sentence -- well, actually,  
16 let me ask a broader question first. As I understand it,  
17 prior to the board meeting, you had an opportunity to review  
18 this document?

19 A I received this board meeting agenda that morning  
20 of the board meeting.

21 Q You hadn't reviewed it with Mr. Sackley the night  
22 before?

23 A No, I had not.

24 Q Did you review it in Mr. Sackley's presence the  
25 morning of the meeting?